

**U.S. Sentencing Commission
First Step Act of 2018 Resentencing Provisions
Retroactivity Data Report**



October 2019

Introduction

As part of its ongoing mission, the United States Sentencing Commission provides Congress, the judiciary, the executive branch, and the general public with data extracted from and based on sentencing documents submitted by courts to the Commission.¹ Data is reported on an annual basis in the Commission's *Annual Report* and *Sourcebook of Federal Sentencing Statistics*.²

The Commission also reports preliminary data for an on-going fiscal year in order to provide real-time analysis of sentencing practices in the federal courts. Since 2005, the Commission has published a series of quarterly reports that are similar in format and methodology to tables and figures produced in the *Sourcebook of Federal Sentencing Statistics*. The quarterly reports contain cumulative data for the on-going fiscal year (*i.e.*, data from the start of the fiscal year through the most current quarter).

On three separate occasions in recent years the Commission has amended the federal sentencing guidelines to lower the punishment for certain drug trafficking crimes, and also voted to apply those reductions retroactively.³ Under section 3582(c)(2) of title 18, courts were authorized to reduce the sentences of incarcerated offenders pursuant to those retroactive guideline amendments. The Commission has periodically reported on the number of offenders who received a sentence reduction under those retroactive amendments and presented other data regarding those cases.⁴

One of those guideline amendments incorporated into the sentencing guidelines the statutory changes Congress made in the penalty provision for crack cocaine offenders through the Fair Sentencing Act of 2010.⁵ On December 21, 2018, the President signed into law the First Step Act of 2018.⁶ Section 404 of that act provides that any defendant sentenced before the effective date of the Fair Sentencing Act of 2010 (August 3, 2010) who did not receive the

¹ In each federal felony or Class A misdemeanor case, sentencing courts are required to submit the following documents to the Commission: the Judgment and Commitment Order, the Statement of Reasons, the plea agreement (if applicable), the indictment or other charging document, and the Presentence Report. *See* 28 U.S.C. § 994(w).

² Electronic copies of the 1995-2018 *Annual Report* and *Sourcebook of Federal Sentencing Statistics* are available at the Commission's website at www.ussc.gov.

³ *See* Amendment 706, as amended by Amendment 711, and made retroactive by Amendment 713 (the 2007 Crack Cocaine Amendment); Amendment 750, made retroactive by Amendment 759 (the 2010 Fair Sentencing Act Amendment); and Amendment 782 (the 2014 Drug Guidelines Amendment, often referred to as "Drugs Minus Two").

⁴ These retroactivity analyses and data reports are available at <https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports>.

⁵ Pub L. No. 111-220 (2010). Section 2 of the Fair Sentencing Act increased the quantity of crack cocaine that triggered mandatory minimum penalties. Section 3 of the Fair Sentencing Act eliminated the statutory mandatory minimum sentence for simple possession of crack cocaine.

⁶ Pub. L. No. 115-391 (2018).

benefit of the statutory penalty changes made by that Act is eligible for a sentence reduction as if Sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the offender was sentenced. The First Step Act authorizes the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court to make a motion to reduce an offender's sentence.

The data in this report represents information concerning motions for a reduced sentence pursuant to Section 404 of the First Step Act which the courts have granted.⁷ The data in this report reflects all motions granted through September 30, 2019 and for which court documentation was received, coded, and edited at the Commission by October 23, 2019.

⁷ The Commission does not collect information on denials of motions under the First Step Act.

Table 1

GEOGRAPHICAL DISTRIBUTION OF GRANTED MOTIONS FOR SENTENCE REDUCTIONS DUE TO RESENTENCING PROVISIONS OF FIRST STEP ACT

District	N	%	District	N	%
TOTAL	1,987	100.0			
South Carolina	132	6.6	Western Tennessee	12	0.6
Middle Florida	124	6.2	Northern New York	11	0.6
Eastern North Carolina	117	5.9	Southern New York	11	0.6
Eastern Virginia	109	5.5	New Jersey	11	0.6
Western Virginia	104	5.2	Western Kentucky	11	0.6
Southern Florida	96	4.8	Western New York	10	0.5
Central Illinois	81	4.1	Southern Texas	10	0.5
Eastern Louisiana	59	3.0	Nebraska	10	0.5
Northern Illinois	55	2.8	Middle Louisiana	8	0.4
Eastern Tennessee	54	2.7	Northern Texas	8	0.4
Northern Florida	47	2.4	Southern Alabama	8	0.4
Western North Carolina	39	2.0	Western Washington	7	0.4
Southern Iowa	36	1.8	Eastern New York	6	0.3
Western Wisconsin	35	1.8	Northern West Virginia	6	0.3
Middle Pennsylvania	33	1.7	Southern West Virginia	6	0.3
Northern Ohio	33	1.7	Northern Georgia	5	0.3
Eastern Texas	31	1.6	Southern Mississippi	4	0.2
Eastern Michigan	30	1.5	Western Arkansas	4	0.2
Western Michigan	29	1.5	Colorado	4	0.2
Eastern Missouri	29	1.5	Western Oklahoma	4	0.2
Eastern Pennsylvania	28	1.4	New Hampshire	3	0.2
Middle North Carolina	26	1.3	Middle Tennessee	3	0.2
Southern Illinois	26	1.3	North Dakota	3	0.2
Northern Indiana	26	1.3	Alaska	3	0.2
Western Texas	24	1.2	Oregon	3	0.2
Western Missouri	24	1.2	Northern Oklahoma	3	0.2
Maryland	23	1.2	Northern Mississippi	2	0.1
Southern Georgia	23	1.2	Northern California	2	0.1
Southern Indiana	22	1.1	Vermont	1	0.1
Kansas	22	1.1	South Dakota	1	0.1
Western Pennsylvania	21	1.1	Arizona	1	0.1
Rhode Island	20	1.0	Nevada	1	0.1
Connecticut	20	1.0	Eastern Washington	1	0.1
Eastern Arkansas	20	1.0	New Mexico	1	0.1
Massachusetts	19	1.0	Eastern Oklahoma	1	0.1
Middle Georgia	19	1.0	Middle Alabama	1	0.1
Central California	18	0.9	Puerto Rico	0	0.0
Western Louisiana	17	0.9	Delaware	0	0.0
Maine	16	0.8	Virgin Islands	0	0.0
Southern Ohio	16	0.8	Southern California	0	0.0
Northern Iowa	16	0.8	Guam	0	0.0
Eastern Kentucky	15	0.8	Hawaii	0	0.0
Northern Alabama	15	0.8	Idaho	0	0.0
Eastern Wisconsin	14	0.7	Montana	0	0.0
Minnesota	13	0.7	Northern Mariana Islands	0	0.0
Eastern California	13	0.7	Utah	0	0.0
District of Columbia	12	0.6	Wyoming	0	0.0

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 2

**YEAR OF ORIGINAL SENTENCE OF OFFENDERS
RECEIVING SENTENCE REDUCTIONS DUE TO
RESENTENCING PROVISIONS OF FIRST STEP ACT¹**

Fiscal Year	N	%
Total	1,978	100.0
2013	2	0.1
2012	10	0.5
2011	72	3.6
2010	253	12.8
2009	298	15.1
2008	274	13.9
2007	285	14.4
2006	165	8.3
2005	138	7.0
2004	105	5.3
2003	95	4.8
2002	64	3.2
2001	38	1.9
2000	33	1.7
1999	25	1.3
1998	29	1.5
1997	17	0.9
1996	20	1.0
1995	19	1.0
1994	17	0.9
1993	8	0.4
1992	4	0.2
1991	2	0.1
1990	5	0.3

¹ Of the 1,987 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, nine were excluded from this analysis because the cases cannot be matched with an original case in the Commission's records.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 3

**ORIGIN OF GRANTED MOTIONS FOR SENTENCE REDUCTIONS
DUE TO RESENTENCING PROVISIONS OF FIRST STEP ACT¹**

CIRCUIT	N	Defendant		Director BOP ²		Attorney for the Government		Court	
		N	%	N	%	N	%	N	%
TOTAL	2,158	1,825	84.6	0	0.0	193	8.9	140	6.5
D.C. CIRCUIT	11	11	100.0	0	0.0	0	0.0	0	0.0
FIRST CIRCUIT	72	57	79.2	0	0.0	14	19.4	1	1.4
SECOND CIRCUIT	64	57	89.1	0	0.0	5	7.8	2	3.1
THIRD CIRCUIT	104	92	88.5	0	0.0	12	11.5	0	0.0
FOURTH CIRCUIT	557	541	97.1	0	0.0	2	0.4	14	2.5
FIFTH CIRCUIT	181	137	75.7	0	0.0	21	11.6	23	12.7
SIXTH CIRCUIT	232	189	81.5	0	0.0	31	13.4	12	5.2
SEVENTH CIRCUIT	328	256	78.0	0	0.0	72	22.0	0	0.0
EIGHTH CIRCUIT	161	124	77.0	0	0.0	8	5.0	29	18.0
NINTH CIRCUIT	71	48	67.6	0	0.0	21	29.6	2	2.8
TENTH CIRCUIT	35	35	100.0	0	0.0	0	0.0	0	0.0
ELEVENTH CIRCUIT	342	278	81.3	0	0.0	7	2.0	57	16.7

¹ Of the 1,987 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, 24 cases were excluded from this analysis because the information received by the Commission prevented a determination of motion origin. Additionally, courts may cite multiple origins for a motion; consequently, the total number of origins cited generally exceeds the total number of cases. In this table, 2,158 origins were cited for the 1,963 cases.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 4

**DEMOGRAPHIC CHARACTERISTICS OF OFFENDERS
RECEIVING SENTENCE REDUCTIONS DUE TO
RESENTENCING PROVISIONS OF FIRST STEP ACT**

Demographics	N	%
Race/Ethnicity		
White	76	3.8
Black	1,804	91.2
Hispanic	84	4.2
Other	14	0.7
Total	1,978	100.0
Citizenship		
U.S. Citizen	1,926	97.6
Non-Citizen	47	2.4
Total	1,973	100.0
Gender		
Male	1,945	98.0
Female	40	2.0
Total	1,985	100.0
Average Age at Original Sentence		32
Average Age at Resentencing		45

¹ Of the 1,987 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, cases were excluded from each section of this table due to the following reasons: missing race information (9), missing citizenship information (14), missing gender information (2), and missing age information (18).

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 5

**SELECTED SENTENCING FACTORS FOR OFFENDERS
RECEIVING SENTENCE REDUCTIONS DUE TO RESENTENCING
PROVISIONS OF FIRST STEP ACT¹**

Sentencing Factors	%
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Weapon^{2,3}	42.7
Weapon Specific Offense Characteristic	22.9
Firearms Mandatory Minimum Applied	20.7
Safety Valve²	0.4
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Guideline Role Adjustments²	
Aggravating Role (USSG §3B1.1)	11.2
Mitigating Role (USSG §3B1.2)	0.7
Obstruction Adjustment (USSG §3C1.1)	7.6
Sentence Relative to the Guideline Range	
Within Range	70.8
Above Range	1.0
Below Range	28.2
Criminal History Category	
I	4.2
II	5.2
III	9.5
IV	9.4
V	6.2
VI	65.5
Career Offender (§4B1.1)²	57.2

¹ Of the 1,987 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, nine were excluded from this analysis because the cases cannot be matched with an original case in the Commission's records.

² This section was limited to the 1,889 cases with complete guideline application information.

³ In 17 cases the court applied the weapon specific offense characteristic and the offender was also convicted of a firearms offense carrying a mandatory minimum penalty.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.

Table 6

**EXTENT OF SENTENCE REDUCTIONS
DUE TO RESENTENCING PROVISIONS OF FIRST STEP ACT¹**

CIRCUIT District	N	Mean			
		Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
TOTAL	1,370	253	183	70	26.2
D.C. CIRCUIT	7	271	208	62	27.3
District of Columbia	7	271	208	62	27.3
FIRST CIRCUIT	27	260	192	67	23.6
Maine	11	258	191	67	24.7
Massachusetts	11	276	203	72	22.8
New Hampshire	1	--	--	--	--
Puerto Rico	0	--	--	--	--
Rhode Island	4	238	175	63	24.8
SECOND CIRCUIT	26	246	169	77	29.2
Connecticut	3	282	181	101	29.2
New York					
Eastern	6	220	156	64	29.0
Northern	10	244	170	73	26.4
Southern	6	248	157	91	37.9
Western	2	--	--	--	--
Vermont	0	--	--	--	--
THIRD CIRCUIT	61	235	178	58	23.2
Delaware	0	--	--	--	--
New Jersey	9	222	167	55	24.9
Pennsylvania					
Eastern	11	269	198	71	23.6
Middle	22	243	177	65	25.9
Western	19	214	172	42	19.0
Virgin Islands	0	--	--	--	--
FOURTH CIRCUIT	393	247	184	63	23.6
Maryland	12	227	172	55	24.0
North Carolina					
Eastern	96	220	169	51	21.9
Middle	22	247	188	59	20.5
Western	9	274	206	69	22.5
South Carolina	114	251	185	66	24.6
Virginia					
Eastern	55	287	213	74	24.1
Western	77	241	171	70	25.4
West Virginia					
Northern	6	278	236	43	17.4
Southern	2	--	--	--	--

Table 6 (cont.)

CIRCUIT	District	N	Mean			
			Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
FIFTH CIRCUIT		136	253	172	81	31.5
Louisiana						
Eastern		57	230	144	86	36.0
Middle		5	303	264	39	13.7
Western		8	240	163	77	30.7
Mississippi						
Northern		0	--	--	--	--
Southern		4	257	192	65	28.7
Texas						
Eastern		31	291	202	90	29.3
Northern		3	337	257	80	24.3
Southern		7	290	220	70	24.7
Western		22	224	154	70	30.3
SIXTH CIRCUIT		134	248	180	68	26.4
Kentucky						
Eastern		6	171	150	21	11.9
Western		11	265	178	87	30.5
Michigan						
Eastern		16	249	189	61	25.0
Western		22	273	202	70	25.5
Ohio						
Northern		30	249	168	81	31.3
Southern		5	225	169	57	29.7
Tennessee						
Eastern		34	250	181	69	26.5
Middle		2	--	--	--	--
Western		9	246	200	46	17.0
SEVENTH CIRCUIT		146	255	185	70	25.8
Illinois						
Central		41	265	195	69	23.9
Northern		26	253	198	55	20.8
Southern		20	263	190	73	27.8
Indiana						
Northern		19	247	192	55	18.7
Southern		21	235	133	102	39.7
Wisconsin						
Eastern		6	242	189	53	21.6
Western		14	262	188	75	27.6
EIGHTH CIRCUIT		115	251	183	68	26.0
Arkansas						
Eastern		9	291	222	70	27.9
Western		4	270	194	76	28.2
Iowa						
Northern		13	284	199	85	30.0
Southern		35	253	184	69	25.7
Minnesota		4	228	206	22	9.9
Missouri						
Eastern		19	204	169	35	17.3
Western		24	264	173	92	32.7
Nebraska		4	191	152	39	22.7
North Dakota		3	257	175	82	30.0
South Dakota		0	--	--	--	--

Table 6 (cont.)

CIRCUIT	District	N	Mean			
			Current Sentence In Months	New Sentence In Months	Decrease In Months From Current Sentence ²	Percent Decrease From Current Sentence
NINTH CIRCUIT		37	229	160	69	29.3
	Alaska	3	200	140	60	29.2
	Arizona	0	--	--	--	--
	California					
	Central	18	264	177	87	32.9
	Eastern	13	222	164	58	25.6
	Northern	0	--	--	--	--
	Southern	0	--	--	--	--
	Guam	0	--	--	--	--
	Hawaii	0	--	--	--	--
	Idaho	0	--	--	--	--
	Montana	0	--	--	--	--
	Nevada	1	--	--	--	--
	Northern Mariana Islands	0	--	--	--	--
	Oregon	1	--	--	--	--
	Washington					
	Eastern	0	--	--	--	--
	Western	2	--	--	--	--
TENTH CIRCUIT		26	272	192	80	30.0
	Colorado	1	--	--	--	--
	Kansas	16	253	164	89	35.4
	New Mexico	1	--	--	--	--
	Oklahoma					
	Eastern	1	--	--	--	--
	Northern	3	379	303	76	19.9
	Western	4	231	168	63	25.0
	Utah	0	--	--	--	--
	Wyoming	0	--	--	--	--
ELEVENTH CIRCUIT		257	272	193	79	27.5
	Alabama					
	Middle	1	--	--	--	--
	Northern	3	401	193	208	48.4
	Southern	0	--	--	--	--
	Florida					
	Middle	109	264	186	78	28.1
	Northern	28	340	216	124	35.9
	Southern	87	264	197	67	23.6
	Georgia					
	Middle	17	235	171	64	27.5
	Northern	3	300	219	81	26.7
	Southern	9	275	207	67	25.4

¹ Of the 1,987 cases in which the court granted a motion for a sentence reduction due to Section 404 of the First Step Act of 2018, 601 cases were excluded from this analysis because the resulting term of imprisonment could not be determined from the documents received by the Commission. Another 16 cases were excluded because the court documentation provided did not specify the length of a new sentence of imprisonment but only a modification to the length of supervised release.

² The average sentence lengths and the average decrease in months from the current sentence are rounded to the nearest whole number. Consequently, the average decrease in months from the current sentence may not equal the difference between the rounded average current sentence and the rounded average new sentence.

SOURCE: U.S. Sentencing Commission, First Step Act Datafile.